

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE CHANDRASHEKARAIAH

W.P.NO.18238/1994

BETWEEN:

1. Sannamma,
w/o late Javaraiah,
major, r/at Keragodu
and post Mandya taluk.

2. Shivanna,
s/o Gante Boraiah,
major, r/at Keragodu
and post Mandya taluk.

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..PETITIONERS

(By Sri G.K.Narasimha Murthy, Adv.)

AND:

1. The State of Karnataka
through the Secretary,
RDPR, M.S.Buildings,
Bangalore.

2. The Deputy Secretary,
No.1, Zilla Panchayath,
Mandya.

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3. K.J.Ramaiah,
s/o Javaraiah,
Keragodu,
Mandya Taluk.

..RESPONDENTS

(By Sri M.Shivappa, Adv. for R-3,
Sri B.J.Somayaji, Adv. for R-2,
Sri K.Nagaraja, Adv. for R-1)

This writ petition is filed under Article 226 of the constitution of India with a prayer to quash the orders made by R-2 in his No.A9-Appeal.86 and 87/93-94 dt.2.6.94 vide Annex.'A'.

This writ petition coming on for hearing this day, the court made the following:-

ORDER

On the application filed by the petitioners the grama panchayath granted the license in favour of the petitioners permitting them to put up construction on 19.2.1994. As against this order the respondent no.3 preferred an appeal before the Deputy Secretary of Zilla Panchayath under section 270 of the Karnataka Zilla Parishads, Taluk Panchayath Samithis, Mandal Panchayaths & Nyaya Panchayaths Act. The Deputy Secretary without noticing that

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he has no jurisdiction to entertain the appeal after coming into force of the Panchayath Raj Act, 1993, has passed an order modifying the license granted by the grama panchayath. This order is under challenge in this writ petition.

2. The Karnataka Panchayath Raj Act came into force on 10.5.1993. License granted in favour of the petitioners is on 19.2.1994 i.e., subsequent to the Panchayath Raj Act came into force. Under section 64 of the Karnataka Panchayath Raj Act appeal lies to the Assistant Commissioner as against the grant of license. Now in view of the subsequent amendment the appeal lies, as against the order of granting license, to the Executive Officer of the Taluk Panchayath. But in any case as against the grant of license no appeal lies to the Deputy Secretary of the Zilla panchayath. Therefore the order passed by the Deputy Secretary which is impugned in this writ petition is without jurisdiction and is liable to be quashed. In the result, I pass the following order:

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Writ petition is allowed. The order of the Deputy Secretary dated 2.6.94 passed in Appeal No.A9-Appeal 86 & 87/93-94 produced as per Annexure-A is quashed. However it is open for the respondent no.3 to challenge the order of the license by way of an appeal before the appropriate authority if he is so advised.

Sd/-
JUDGE



SR